

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

PUBLIC CITIZEN, INC.,
1600 20th Street NW
Washington, DC 20009,

Plaintiff,

v.

OFFICE OF MANAGEMENT
AND BUDGET,
725 17th Street NW
Washington, DC 20503,

Defendant.

Civil Action No. 19-61

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This action is brought under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, to compel the Office of Management and Budget to produce records responsive to a FOIA request.

JURISDICTION AND VENUE

2. This Court has jurisdiction under 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B). Venue is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

PARTIES

3. Plaintiff Public Citizen, Inc. is a non-profit public-interest organization with members in all 50 states. Since its founding in 1971, Public Citizen has worked before Congress, regulatory agencies, and the courts to advance the interests of its members and to educate the public on a wide range of consumer protection issues. In particular, Public Citizen works to promote openness in government and collects and disseminates information related to

governmental actions and practices. Public Citizen submitted the FOIA request at issue in this action.

4. Defendant Office of Management and Budget (OMB) is an agency for the purposes of FOIA and has possession of and control over the records that Public Citizen seeks.

STATEMENT OF FACTS

5. On May 8, 2018, Public Citizen submitted a FOIA request to OMB for certain records related to a Consumer Financial Protection Bureau (CFPB) final rule known as the Payday Rule, *see* 82 Fed. Reg. 54,472 (Nov. 17, 2017). Specifically, the request sought:

- a) any communication regarding the Payday Rule, including any litigation related to that rule, that was to, from, or including the Community Financial Services Association of America (CFSA), the Consumer Service Alliance of Texas (CSAT), CFSA or CSAT employees, and/or attorneys or other representatives of CFSA or CSAT;
- b) any records concerning meetings regarding the Payday Rule, including any litigation related to that rule, with CFSA, CSAT, CFSA or CSAT employees, and/or attorneys or other representatives of CFSA or CSAT; and
- c) any documents related to the Paperwork Reduction Act request associated with the Payday Rule, other than those available on the reginfo.gov website.

The request specified that it sought records created, updated, or received by OMB between February 1, 2018, and the date of processing of the request.

6. In its FOIA request, Public Citizen sought a full waiver of fees and explained in support that disclosure of the requested information would be in the public interest and not for commercial use.

7. On May 8, 2018, OMB acknowledged Public Citizen's request by email and assigned it OMB FOIA number 2018-326.

8. On July 17, 2018, responding to an email from Public Citizen seeking an update, OMB informed Public Citizen that it had conducted a search that yielded 536 documents but had not yet reviewed those documents.

9. On November 9, 2018, OMB informed Public Citizen that it had begun reviewing potentially responsive records.

10. On December 20, 2018, responding to an email from Public Citizen, OMB estimated that it expected to respond to Public Citizen's request in January 2020.

11. More than 20 working days have passed since OMB received Public Citizen's May 8, 2018, FOIA request and OMB has not responded to the fee waiver request, made a determination on the substance of the FOIA request, or produced any records in response to it.

12. Public Citizen has exhausted all administrative remedies with respect to its FOIA request.

CAUSE OF ACTION

13. Public Citizen has a right under FOIA to the records it requested and to a public interest fee waiver.

14. There is no legal basis for OMB's failure to disclose the requested records in response to the FOIA request.

PRAYER FOR RELIEF

WHEREFORE, Public Citizen requests that this Court:

(1) Declare that OMB's withholding of the requested records is unlawful;

(2) Order OMB to make the requested records available to Public Citizen at no cost and without delay;

(3) Award Public Citizen its costs and reasonable attorneys' fees pursuant to 5 U.S.C. § 552(a)(4)(E); and

(4) Grant such other and further relief as this Court may deem just and proper.

Dated: January 11, 2019

Respectfully submitted,

/s/ Rebecca Smullin

Rebecca Smullin (D.C. Bar No. 1017451)

Micah Bluming (Cal. Bar No. 314273)*

Public Citizen Litigation Group

1600 20th Street NW

Washington, DC 20009

(202) 588-1000

rsmullin@citizen.org

* Active member in good standing of the State Bar of California and the Supreme Court of California, authorized to practice under the direct supervision of Rebecca Smullin pursuant to D.C. Court of Appeals Rule 49(c)(8) during the pendency of first application to the District of Columbia Bar submitted within 90 days of commencing practice in the District of Columbia.